

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND H. DENTON,

Petitioner, No. CIV S-03-1558 DFL JFM P

vs.

SILVIA GARCIA, Warden,

Respondent. ORDER

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Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By order filed January 31, 2006, the court directed respondent to file within thirty days an answer to the amended petition. In the same order, the court granted petitioner a period of thirty days after the filing of respondent's answer in which to file a traverse. On February 27, 2006, petitioner filed a motion styled as a motion for a finding of factual innocence and for an evidentiary hearing, and a motion for default judgment. On February 28, 2006, respondent filed a request for an extension of time to file an answer. Good cause appearing, respondent's request will be granted.

Petitioner's motion for default judgment is improvidently brought as it was filed before respondent's answer was due. In addition, default judgment is not an appropriate remedy

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1 in a habeas corpus proceeding. For these reasons, the motion for default judgment will be
2 denied.

3 Petitioner's motion for a finding of factual innocence and for evidentiary hearing
4 is premature and will therefore be denied without prejudice. The court will not make any
5 determination on the merits of any claim raised in the amended petition or on the need, if any, for
6 an evidentiary hearing, until respondent's answer and petitioner's traverse have been filed.
7 Petitioner is cautioned that the court will look with great disfavor on any additional filing not
8 specifically authorized by applicable rules or orders of this court.

9 In accordance with the above, IT IS HEREBY ORDERED that:

10 1. Petitioner's February 27, 2006 motion for default judgment is denied;

11 2. Petitioner's February 27, 2006 motion for finding of factual innocence and

12 evidentiary hearing is denied without prejudice;

13 3. Respondent's February 28, 2006 request for an extension of time is granted;

14 4. Respondent's answer to the amended petition shall be filed and served on or

15 before April 3, 2006; and

16 5. Petitioner's traverse shall be filed and served not later than thirty days after

17 service of respondent's answer.

18 DATED: March 16, 2006.

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21 John F. Mariano
22 UNITED STATES MAGISTRATE JUDGE